



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 4.10.2021.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. (PD) (MD) No.2245 of 2014

and

M.P. (MD) No.1 of 2014

Ganesan

Petitioner/Plaintiff/Defendant

vs.

Jebasian Jeyakumar

Respondent/Respondent/Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 26.8.2014 passed in I.A.No.937 of 2013 in O.S.No.252 of 2012 on the file of the I Additional District Munsif, Tirunelveli.

For Petitioner : Mr.H.Arumugam

For Respondents : Mr.V.Balaji

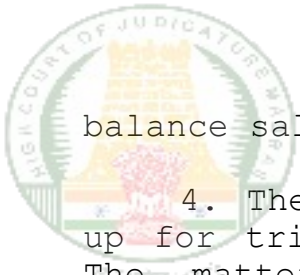
ORDER

The revision has been filed by the defendant against the order passed by the Trial Court in the petition filed by him in I.A.No.937 of 2013 in O.S.No.252 of 2012 in dismissing the petition in respect of two amendments out of seven amendments sought to be made in the written statement while allowing the other five amendments.

2. The brief facts are as under:-

The revision petitioner is the defendant in O.S.No.252 of 2012 on the file of the I Additional District Munsif Court, Tirunelveli. The suit was filed seeking for recovery of possession. It is the case of the respondent/plaintiff that the petitioner/defendant approached him during the month of January 2005, to get a house on rent. At that time, the petitioner/defendant had paid a sum of Rs.30,000/- to the plaintiff and it was agreed that towards the interest, the defendant should be allowed to keep the premises for a period of five years and whenever he wants to vacate the, the amount of Rs.30,000/- should be paid by the plaintiff. Since the defendant had refused to vacate, the suit for recovery of possession was filed.

3. The petitioner/defendant had filed written statement not only denying the mortgage but also he had set up a counter claim of oral agreement dated 5.8.2001, whereby the plaintiff had agreed to sell the property to him and from then onwards, the defendant had been paying several payments totalling to the tune of Rs.1,28,900/- out of the total sale consideration agreed at Rs.160,000/- and the



balance sale consideration of Rs.31,100/- was remaining to be paid.

4. The Trial Court had framed issues and the matter was taken up for trial. Witnesses on both sides were examined and closed. The matter was posted for arguments. At that stage, the petitioner/defendant had filed a petition seeking for amendment of the pleadings.

5. The particulars of amendments sought for are as under:-

"(1) In Para 8 of the written statement in the 2nd line delete the word "that" and substitute "whether".

(2) In para 8 of the written statement in the 4th line delete the word "go".

(3) In para 8 of the written statement in the 5th line delete the word "argument" and substitute "agreement".

(4) In para 8 of the written statement in the 6th line after the word no such delete the word "no".

(5) In para 10 of the written statement in the 4th line after the word the insert the word "suit".

(6) In para 11 of the written statement in the 1st line after the word "oral" insert the word "Sale".

(7) In para 13 of the written statement in relief "a" 1st line delete the word "defendant" and substitute "plaintiff"."

6. The respondent/plaintiff had filed a counter objecting the amendment of pleadings. In the counter, the respondent/plaintiff had specifically stated that the defendant, having admitted at para 8 that the transaction is a usufructuary mortgage, cannot seek for amendment at this stage. However, during enquiry, the plaintiff had agreed for amendment of pleadings except amendments 1 and 5.

7. The Trial Court had allowed the petition amending the plaint except items 1 and 5. Aggrieved by the rejection in respect of amendments 1 and 5, the present revision has been filed by the petitioner/defendant.

8. The learned counsel for the revision petitioner would submit that having allowed the amendment of pleadings in part, the Trial Court ought to have allowed the amendment in items 1 and 5 also. He would further submit that the cumulative reading of the entire written statement was that the petitioner had denied that there was usufructuary mortgage and even right from the date of giving reply, the petitioner had denied the usufructuary mortgage and in fact, he had made a counter claim that there was oral sale agreement in between the petitioner/defendant and the respondent/plaintiff and the Trial Court ought not to have read the first sentence in para 8 in isolation and held it to be an



admission. Having not stated anything with regard to other amendments, the Trial Court ought to have allowed the petition and the Trial Court ought not to have rendered a finding with regard to the merits of the case. He would also contend that the Trial Court has to take into consideration the entire materials on record including the oral evidence and ought not to have rendered a finding as if the petitioner had accepted that there was a usufructuary mortgage and thereby he would seek to set aside the order.

9. The learned counsel for the petitioner would further submit that Section 58 of the Evidence Act, no doubt, postulates that admitted facts need not be proved, however, the Trial Court had wrongly come to the conclusion that the petitioner had made a specific admission whereas it is not so. The learned counsel would submit that as per the proviso to Section 58 of the Indian Evidence Act, it is for the discretion of the court to require the facts to be admitted to be proved otherwise than admitted by such admission. When the petitioner had made out a case for specific performance and had let in evidence, the Trial Court cannot isolate a few sentences in the written statement and take advantage of those parts of the sentences which are favourable to the plaintiff and render a decision. He would reiterate that the Trial Court has to take the entire materials available on record rather than pulling out a few sentences from the written statement and thereby he would seek that the finding of the Trial Court has to be set aside and the court has to look into the entire materials.

10. Per contra, Mr. Balaji, learned counsel for the respondent would submit that the petitioner had made a categorical admission at para 8 and having admitted that it is usufructuary mortgage, the petitioner cannot be permitted to amend the same. The admission in the pleading cannot be allowed to be amended. However, the petitioner/defendant is entitled to explain or clarify the situation in what circumstances the error has crept in the written statement and he would further submit that only to avoid further delay, even without permitting the court to look into the due diligence, the respondent fairly conceded for amendment in respect of five items out of 7 amendments sought for and had objected in respect of items 1 and 5. He would reiterate that the suit is of the year 2012 and because of the pendency of this revision, the case is still pending.

11. Heard the learned counsel appearing for the parties and perused the materials available on record.

12. The petitioner has sought to make seven amendments in his pleadings. The respondent/plaintiff had conceded in respect of all the amendments except 1 and 5. The Trial Court, while allowing the petition in part and rejecting it in respect of amendment items 1 and 5, had rendered a finding as if the petitioner had admitted it to be usufructuary mortgage and that it would alter the nature of



the defence.

13. The court has also relied on the judgment in **S.Malla Reddy & others v. Future Builders Co-operative Housing Society & others** (2013 (3) CTC 343) and held that once the defendant filed written statement admitting the claim of the plaintiff and praying for decree of the suit, he cannot get back and file an application to strike out the pleadings in the written statement.

14. But, as far as the facts of his case is concerned, except a stray admission in the first sentence of para 8, taking into consideration the entire written statement, there is no admission that it is usufructuary mortgage and thereby this court finds such a sentence need not be read isolated and construed it as an admission.

15. Though it is a settled law that facts admitted need not be proved as per Section 58 of the Indian Evidence Act, the proviso to such section makes it clear that it is for the discretion of the court to require the facts to be admitted to be proved otherwise than admitted by such admission and the Trial Court cannot isolate a few sentences in the written statement and take advantage of those parts of the sentences which are favourable to the plaintiff and render a decision. The Trial Court has to take into consideration the entirety of the written statement and it must be satisfied that the plaintiff has proved his case beyond any doubt otherwise than the stray admission inadvertently made by the defendant in the written statement. Therefore, at this stage, this court is not inclined to interfere with the order passed by the court below. It is made clear that the court has to take into consideration the entire materials available on record and decide the suit independently taking into consideration the facts and circumstances in accordance with law in light of proviso to Section 58 of the Indian Evidence Act. The revision petitioner/defendant is permitted to explain and clarify the circumstances under which the said admission has been made in the first sentence of para 8. Any observation made by this court except the above one, made in this revision shall not have any bearing on the suit.

16. With the above observations, the civil revision petition is disposed of. No costs. The connected Miscellaneous Petition is closed.

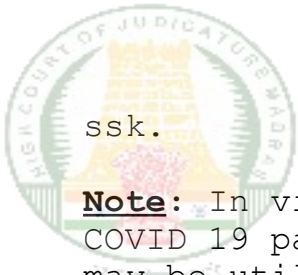
Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



ssk.

Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

I Additional District Munsif,
Tirunelveli.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-31449[F] dated 06/10/2021)

C.R.P. (PD) (MD) No.2245 of 2014 and
M.P.(MD) No.1 of 2014
4.10.2021.

NSN(CO)
KB(25.10.2021) 5P 3C